

Ordinance No. 06-089

An ordinance amending the "Water and Sewer" Chapter of the Code of the City of Arlington, Texas, 1987, by the addition of Article XI, entitled Municipal Setting Designations; providing for a fine of up to \$500 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Water and Sewer" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the addition of **Article XI, Municipal Setting Designations**, so that said Article shall be and read as follows:

ARTICLE XI

MUNICIPAL SETTING DESIGNATIONS

Section 11.01 Findings

The City Council of the City of Arlington makes the following findings:

- (1) There are areas of shallow groundwater within the City and its extraterritorial jurisdiction that are not usable as potable water sources;
- (2) Commercial and industrial properties exist in Arlington and its extraterritorial jurisdiction underlain with unusable groundwater that have become contaminated by historical on-site or off-site sources;

- (3) The City of Arlington does not utilize groundwater as a source for public drinking water, and less than six (6) percent of all municipal water supplies in Tarrant County come from groundwater sources;
- (4) The use of municipal setting designations within Arlington and its extraterritorial jurisdiction allows for a state-evaluated corrective action process for groundwater that is directed toward protection of human health and the environment balanced with the economic welfare of the citizens of the City; and
- (5) Where public drinking water is available, the use of groundwater as a potable water source in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to human health.

Section 11.02 Definitions

As used in this division, unless the context clearly indicates otherwise:

Affected community means those persons entitled to notice in Section 11.06(A)(3) below.

Applicant means the owner of the land seeking an MSD.

Authorized representative means, for purposes of signing an application, if the applicant is a corporation, the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; if the applicant is a partnership or sole proprietorship, a general partner or proprietor, respectively; if the applicant is a limited liability company, the manager; and if the applicant is a local government, the chief executive officer or his authorized designee.

Chemical of concern means any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity.

Director means the Director of Environmental Services, or other employee designated by the City Manager to enforce and administer this chapter, or the Director's designated representative.

Environmental risk assessment means the qualitative and quantitative evaluation performed in an effort to define the risk posed to human health and/or the environment by the presence or potential presence and/or use of contaminants as defined in Section 361.801(1) of the Texas Health and Safety Code.

Groundwater means water below the surface of the earth.

Municipal setting designation (MSD) means a designation as provided by Chapter 361, Subchapter W, of the Texas Health and Safety Code, which authorizes the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to certify municipal setting designations in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Potable water means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

Section 11.03 Use of Groundwater in MSD Areas as a Potable Water Source Prohibited

- A. A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a MSD area as a potable water source.
- B. A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a MSD area for a purpose prohibited in the ordinance creating that MSD.

Section 11.04 Application for City Council Approval of MSD

- A. A person, excluding the City of Arlington, seeking City Council approval of a MSD for an area within the

corporate limits of the City of Arlington, or within its extraterritorial jurisdiction, shall apply in writing, with the number and format of copies, as determined by the Director.

B. An application shall contain:

1. The applicant's name and address, and the name, address, daytime telephone number, and email address of a contact person and the licensed professional who prepared the application;
2. The location and legal description of the proposed outer boundaries of the MSD area for which designation is sought;
3. A copy of the application with the Executive Director of the TCEQ for a MSD for the area;
4. A statement as to whether a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 and that supplies or is capable of supplying drinking water to the area for which the MSD is sought, and property within one-half mile of the area for which the MSD is sought;
5. A description of the groundwater sought to be restricted, including the identified chemicals of concern therein and the levels of contamination known to the applicant, and the identified vertical and horizontal extent of the contamination. If the applicant has not documented groundwater contamination offsite that originates from the area for which an MSD is sought, the application shall include a statement as to whether contamination more likely than not exceeds a residential assessment level offsite and the basis for that statement;
6. Identification of the person(s) responsible for the contamination of the groundwater, if known;
7. A listing of:
 - a. All state-registered private water wells within five (5) miles from the boundary of

the area for which the designation is sought, including a notation of those wells that are used for potable water purposes (if known), and a statement as to whether the applicant has provided the owners with notice as provided in Texas Health and Safety Code Section 361.805;

b. Each retail public utility, as that term is defined in the Texas Water Code, that owns or operates a groundwater supply well located not more than five (5) miles from the area for which the MSD is sought, and a statement as to whether the applicant has provided the retail public utilities with notice as provided in Texas Health and Safety Code Section 361.805; and

c. Each municipality, other than the City of Arlington, with a boundary located not more than one-half (1/2) mile from the area for which the MSD is sought; or that owns or operates a groundwater supply well located not more than five (5) miles from the area for which the MSD is sought; and a statement as to whether the applicant has provided the municipalities with notice as provided in Texas Health and Safety Code Section 361.805;

8. A site map, drawn to scale, including a metes and bounds description of the proposed MSD area, the boundary of the proposed MSD area, the location of groundwater on the proposed MSD area, and the extent of groundwater contamination to the limits that it has been defined. The map shall include a statement by a professional land surveyor registered by the Texas Board of Professional Surveying attesting to the accuracy of the metes and bounds description; and

9. Any other information that the Director deems pertinent.

C. The application shall be signed by an authorized representative of the applicant and shall contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

D. An application shall be accompanied by:

1. A set of printed mailing labels with the names and addresses of persons listed in Subsection (B)(7) above;
2. An electronic file of the names and addresses of persons listed in Subsection (B)(7) above, in a format acceptable to the Director and compatible with City information systems; and
3. A nonrefundable application fee of \$1,000 and actual Tarrant County recording fees.

E. An applicant may withdraw its application only in writing by letter sent certified mail, return receipt requested, to the Director, and shall forfeit the application fee. If the Director has not issued public notice prior to the receipt of the withdrawal letter, the applicant may reapply at any time. If public notice has issued, a new application is subject to the limitations of Section 11.09 below.

Section 11.05 Staff Review

A. For purposes of the times stated in this ordinance, an application is deemed to have been received on the date that the application was actually received by the Director, as indicated by the file date stamped on the application by the department of Environmental Services.

- B. The application for a MSD shall be forwarded to the Development Review Committee (DRC) for staff review. The purpose of the review is to determine whether the application is complete, and whether any current or future City property or other interests have the potential to be impacted by the proposed MSD. City staff shall not conduct an environmental risk assessment of the application.
- C. City staff review and reporting to the applicant will be within the established DRC timetables. DRC will provide a written report noting any discrepancies in the application, and advising of any City interests that may potentially be impacted by the proposed MSD.
- D. If the Director determines that the application is incomplete, he will return the application to the applicant, noting the deficiencies in writing. The applicant shall have thirty (30) days from the date of the deficiency letter to correct the deficiencies and resubmit the application. If the applicant fails to submit a corrected application within the allotted time, the application shall be deemed to be withdrawn and the application fee forfeited.
- E. If the Director determines that the application is complete, he will schedule a public meeting and a public hearing. The public meeting must be held prior to the public hearing.
 - 1. A public meeting will be scheduled approximately forty-five (45) days following the day the application was received; and
 - 2. A public hearing of the City Council will be scheduled approximately sixty (60) days following the day the application was received.

Section 11.06 Notice of Public Meeting and Public Hearing

- A. Notice of the public meeting and the public hearing on a MSD application may be combined and must include the date, time and location of the two (2) events, the identity of the applicant, the location and legal description of the area for which the MSD is sought, the purpose of the MSD, the type of contamination

identified in the groundwater of the area for which the MSD is sought, and a statement that a copy of the application is available for public viewing at the department of environmental services. Notice will be made as follows:

1. The Director will publish notice of a public meeting and a public hearing for a proposed MSD in the official newspaper of the City, not less than fifteen (15) days before the public meeting;
 2. The Director will request that the City Secretary post the notice at City Hall, in a place readily accessible to the general public at all times, not less than fifteen (15) days before the public meeting; and
 3. The Director will provide written notice of a public meeting and a public hearing for a proposed MSD, not less than fifteen (15) days before the date of the public meeting by properly addressed and regular postage paid, in the United States mail. Notice will be mailed to:
 - a. The applicant;
 - b. The list provided by applicant pursuant to Section 11.04(B)(7);
 - c. The executive Director of the Trinity River Authority, if the area for which an MSD is sought is within five miles five (5) miles of the Trinity River; and
 - d. All owners of real property lying within 200 feet of the subject property, as the ownership appears on the last approved City tax roll.
- B. The Director will direct the posting of at least one (1) sign upon the area for which a MSD has been requested. Posting shall be in the same manner as zoning amendments. The sign(s) must state that an MSD has been requested for the area and that additional information can be acquired by telephoning the number listed thereon or visiting the web site address listed thereon. The erection and/or the continued maintenance

of any such sign shall not be deemed a condition precedent to the holding of any public meeting or public hearing or to any official action concerning the MSD application.

Section 11.07 Public meeting

- A. The purpose of a public meeting is for the applicant to provide information to the affected community about MSDs and the application and to obtain input on the application prior to a formal hearing before the City Council.
- B. The public meeting will be held in the evening at a location convenient to the affected community.
- C. The applicant or its representative must appear at the public meeting. If the applicant fails to appear at the public meeting either in person or by representative, the application shall be deemed withdrawn and the application fee forfeited.
- D. The Director will conduct the meeting, giving the applicant or its representative the opportunity to present its reasons for requesting an MSD, and giving members of the affected community the opportunity to ask the applicant questions or make oral comments on the application.
- E. The Director will make a tape recording of the public meeting available for the public.

Section 11.08 City Council Public Hearing

- A. Prior to the public hearing, the Director will provide the City Council a copy of the application, and a written report summarizing the request for the MSD approval, any staff comments, and minutes of the public meeting.
- B. The applicant or its representative must appear at the public hearing and present the request for a MSD approval. If the applicant fails to appear at the public hearing, the application shall be deemed withdrawn and the application fee forfeited.

- C. Persons wishing to speak either in favor of or against the application will be provided the opportunity in accordance with City Council guidelines for public hearings.
- D. If approving an application, the City Council shall:
 - 1. Adopt a resolution supporting the application to be presented to the TCEQ; and
 - 2. Enact an ordinance prohibiting the potable use of designated groundwater from beneath the MSD area. The ordinance must include a metes and bounds description of the MSD area to which the ordinance applies; a listing of the contaminants; and a statement that the ordinance is necessary because the contaminant concentrations exceed TCEQ potable water standards.
 - 3. Place other reasonable restrictions on the use of designated groundwater and including, but not limited to, specification of underground construction materials to be used in the MSD area.
- E. City Council approval of an application shall not be deemed to waive the City's right to comment on a MSD application that has been filed with the Executive Director of the TCEQ as provided by Texas Health and Safety Code Section 361.805.

Section 11.09 Limitation on Reapplication

If after public hearing the City Council disapproves an application, or if the applicant has withdrawn its application after public notice has issued, no new MSD applications for the proposed MSD area shall be accepted by the City or scheduled for a public hearing by the City Council within a period of twelve (12) months of the date of disapproval or withdrawal.

Section 11.10 Additional requirements

- A. A person who has received approval of a MSD from the City, shall, upon issuance from the TCEQ, provide the

Director with a copy of the certificate of completion or other documentation issued for the MSD area, showing that response actions, if required, have been completed.

- B. A person commits an offense if they fail to provide the Director with the documentation required in Subsection (A) above, within thirty (30) days of its issuance by the TCEQ.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars (\$500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and

he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of August, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 22nd day of August, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 